



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

MARIE JOHNSTON,

**Complainant,
and**

**CITY OF CHICAGO POLICE DEPARTMENT
Respondent.**

)
)
) **Charge No:1998CF2836**
) **EEOC No: 21B982308**
) **ALS No: 10945**
)
)
)
)
)

RECOMMENDED ORDER AND DECISION

This matter is before me on Complainant's *Motion for Award of Attorney's Fees and Costs* filed April 20, 2004, following the issuance of a Recommended Liability Determination (RLD) in favor of Complainant. Respondent has not responded to the petition, although given time in which to do so.

FINDINGS OF FACT

1. Susan P. Malone (Malone) represented Complainant in this matter. Malone graduated from Chicago Kent College of Law in 1979. She opened her own private practice in 1983, which practice primarily includes flat fee/short term matters that are not based upon an hourly billing, and contingent fee matters typically in employment, civil rights and /or personal injury cases. Malone has a contingent fee agreement with Complainant providing that in the event of a settlement or judgment expressly including attorney's fees, such fee award would be in lieu and in place of any percentage recovery from the client. Malone is seeking fees at \$250.00 per hour.
2. Complainant submits an affidavit from Seth Halpren (Halpren). Halpren graduated from law school in 1993 and is a partner in the firm Malkinson & Halpren practicing employment, wrongful discharge and civil rights litigation. He

states that he is familiar with the usual and customary hourly rates of attorneys practicing civil rights and employment discrimination litigation in the Chicago Metropolitan area and, in cases where an hourly fee is charged, the hourly rate of \$250.00 is not uncommon for an attorney with more than 20 years of experience. In his practice, he states the usual and customary hourly rate as \$250.00.

3. Complainant submits a signed statement from Jeffrey L. Taren (Taren). Taren is a partner and founder of Kinoy, Taren & Geraghty, P.C. He graduated from Boston College Law School in 1977 and has been licensed to practice law in Illinois since 1977. His firm includes the practice of employment, Fair Labor Standards Act and civil rights litigation. Taren is a hearing officer with the Chicago Commission on Human Relations and the Cook County Human Rights Commission and has ruled upon fee petitions submitted in connection with those proceedings. Taren avers that the hourly rate of \$250.00 is within the reasonable market rate for an attorney in Chicagoland with similar experience as Malone's. Taren indicates his current, usual and customary billing rate for an individual employment case is \$340.00 per hour; for 2002 and 2003 his billing rate was \$325.00 hour.
4. Complainant requests compensation for 119.50 hours of legal services performed and reimbursement of \$70.24 for costs and expenses.
5. The RLD allowed Respondent 21 days after service of the fee petition to file written objections to the petition. Complainant's fee petition was filed with a certificate of mail service upon Respondent on April 20, 2004. Receipt is deemed to occur on the fourth day after mailing in accordance with Commission Procedural Rules at 5300.20. Therefore, Respondent is deemed to have

received the petition on April 24, 2004 and Respondent had until May 15, 2004 to file an opposing brief if it so chose.

CONCLUSIONS OF LAW

1. Pursuant to Section 8A-104(G) of the Illinois Human Rights Act, 775 ILCS 5/1-101 et. seq., (Act), a prevailing Complainant is entitled to reasonable attorney's fees and necessary costs incurred to litigate this matter.
2. Respondent has waived objection to the issue of Complainant's attorney's fees and costs by failing to file a written objection to the petition.
3. The Party seeking attorney's fees is required to provide evidence regarding the number of hours expended, the hourly rate and necessary costs.
4. The skill and experience of the attorney and the evidence of the usual and customary rate for area attorneys support that \$250.00 is the reasonable hourly rate for legal services rendered in the litigation of this matter.
5. Actual costs incurred in litigating this matter were reasonable and necessary.

DETERMINATION

Complainant is entitled to an award of \$29,875.00 in attorney's fees for 119.50 hours of legal services at the rate of \$250.00 per hour for the services of Susan P. Malone. Complainant is also entitled to an award of \$70.24 for reasonable and necessary costs.

DISCUSSION

After a finding of liability against Respondent, Complainant is entitled to reasonable attorney's fees and costs incurred in litigating the matter. The purpose of the fee award is to provide an effective means of access to the judicial process to victims of civil rights violations who might not otherwise have the means to retain counsel. **Clark and Champaign National Bank**, 4 Ill.HRC Rep. 193 (1982). In **Clark**, the Commission set forth guidelines to be considered in awarding attorney's fees. Although the provision

of the Act awarding attorney's fees should be accorded liberal construction, the purpose of such awards is not to provide a windfall for prevailing attorneys. **York and Al-Par Liquors**, __ Ill. HRC Rep. __ (1986CF0627, June 29, 1995). The burden of proof for requesting attorney's fees rests with the Complainant.

Appropriate Hourly Rate

When considering a fee petition, it is first necessary to establish a reasonable hourly rate. An appropriate hourly rate is generally dependent upon the actual hourly rate the attorney charges, the experience of the attorney and previous awards of attorney's fees to counsel. **Clark and Champaign National Bank**, *supra*.

Complainant requests an hourly rate of \$250.00. The requested rate is reasonable and adequately supported. Complainant submits the affidavit of Seth Halpern (Halpern). Halpern graduated from law school in 1993 and is a partner in the firm Malkinson & Halpern practicing employment, wrongful discharge and civil rights litigation. Halpern avers that he is familiar with the usual and customary rates of civil rights and employment discrimination attorneys who represent plaintiffs in the Chicago Metropolitan area. He states that in cases where an hourly fee is charged, the usual hourly rate of \$250.00 is not uncommon for an attorney with more than 20 years of experience. He states that the usual and customary hourly rate charged in his own practice is \$250.00.

Complainant also submits a signed declaration by Jeffery L. Taren. Taren states that he is a partner and founder of the law firm Kinoy, Taren & Geraghty, P.C., he graduated from Boston College Law School in 1977 and he has been licensed to practice law in Illinois since 1977. His practice includes employment, Fair Labor Standards Act and civil rights litigation. Taren states that he is a hearing officer with the Chicago Commission on Human Relations and the Cook County Human Rights Commission and that he has ruled upon fee petitions submitted in these venues. Taren

states that the hourly rate of \$250.00 is within the reasonable market rate for an attorney in Chicago with similar experience as Malone. Taren's current usual and customary billing rate for an individual employment case is \$340.00 per hour; for 2002 and 2003 his billing rate was \$325.00 hour.

Complainant's requested hourly rate of \$250. 00 is supported by the averments of two attorneys familiar with the rates charged for comparable services in the Chicagoland area in civil rights matters. The requested rate is reasonable and is not objected to by Respondent.

Appropriate Number of Hours Expended

Once the hourly rate is decided upon, the next step is to determine whether the hours claimed are justified. Complainant files a billing itemization as to the time spent and hours billed for services performed. The billing statement is sufficiently detailed for examination. I have examined the billing statement and find the hours expended and requested are reasonable and adequately supported.

Costs

Complainant requests \$26.80 in expenses for the preparation of copies of exhibits for witnesses and the Administrative Law Judge, \$13.44 for copies of exhibits and material for Respondent's counsel, and \$30.00 for a witness fee to Carl Merrit. Malone states in her affidavit that these expenses were not usual office expenses, but were expenses incurred to prepare copies of exhibits utilized at trial and for witness fees. I find these fees are reasonable and adequately supported for the litigation of this matter.

RECOMMENDATION

Based on the foregoing, I recommend that:

1. Respondent be ordered to pay Complainant \$29,875.00 for reasonable attorney's fees for the services of Malone;
2. Respondent be ordered to pay Complainant \$70.24 for reasonable costs;

3. Complainant receive all other relief recommended in the RLD.

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: June 24, 2004